

## ORAL ARGUMENT SCHEDULED FOR DECEMBER 6, 2024

### UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

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STATE OF WEST VIRGINIA, <i>et al.</i> ,	)	
	)	
Petitioners,	)	
	)	
v.	)	No. 24-1120
	)	(and consolidated cases)
U.S. ENVIRONMENTAL	)	
PROTECTION AGENCY, <i>et al.</i> ,	)	
	)	
Respondents.	)	
	)	

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### PETITIONERS' ORAL ARGUMENT PROPOSAL

As the Court's October 21, 2024 letter requires, Petitioners submit this proposed format for oral argument. Although Petitioners consulted with Respondents, the parties were unable to agree. Petitioners thus submit this separate proposal.

Petitioners propose that oral argument comprise three phases, with each side (Intervenors included) having a total of 70 minutes, divided as follows:

<u>Issue</u>	<u>Party</u>	<u>Time Allotted</u>
<p>EPA's selection and application of 90% carbon capture and storage as the "best system of emission reduction" for existing coal-fired and new natural-gas-fired facilities.</p> <p>(Addressed in Section I of both Petitioners' and Respondents' briefs.)</p>	<ul style="list-style-type: none"> <li>• Scott Keller (counsel for Petitioner National Rural Electric Cooperative Association)</li> <li>• Respondents and Respondent-Intervenors (divided as they determine)</li> <li>• Rebuttal as reserved</li> </ul>	30 minutes each side
<p>EPA's selection and application of 40% natural gas co-firing as the "best system of emissions reduction" for existing coal-fired facilities that commit to retire by 2039.</p> <p>(Addressed in Section II of both Petitioners' and Respondents' briefs.)</p>	<ul style="list-style-type: none"> <li>• Allison Wood (counsel for Petitioner Electric Generators for a Sensible Transition)</li> <li>• Respondents and Respondent-Intervenors (divided as they determine)</li> <li>• Rebuttal as reserved</li> </ul>	20 minutes each side
<p>State discretion and sovereignty, and the implications of the major questions doctrine for the Rule as a whole.</p> <p>(Addressed in Sections III and IV of both Petitioners' and Respondents' briefs.)</p>	<ul style="list-style-type: none"> <li>• Michael Williams (counsel for Petitioner State of West Virginia)</li> <li>• Respondents and Respondent-Intervenors (divided as they determine)</li> <li>• Rebuttal as reserved</li> </ul>	20 minutes each side

Petitioners and Respondents have agreed that the parties could rest on the papers for all remaining issues in the briefs.

Petitioners' proposal provides an orderly way to address issues of major national importance. No one can doubt the Rule's importance, as it will reshape our nation's energy grid while imposing billions in costs. It implicates several serious legal questions that have already spurred hundreds of pages of briefing. The Rule's issues deserve a full airing at argument.

Petitioners' proposal also tracks the Court's approach to handling oral argument on similar rulemaking efforts under the same Clean Air Act provision. The Court heard a challenge to the so-called Clean Power Plan en banc, leading to more than seven hours of argument. *See West Virginia v. EPA*, No. 15-1363 (and consolidated cases), ECF No. 1637882 (D.C. Cir. Sept. 27, 2016). A second oral argument on the Affordable Clean Energy Rule was nine hours long. *See Am. Lung Ass'n v. EPA*, No. 19-1140 (and consolidated cases), ECF No. 1865571 (D.C. Cir. Oct. 8, 2020). As Petitioners propose to do here, the Court grouped those arguments by subject matter.

In short, the Court has recognized before that these issues require careful—and sometimes extended—consideration. Petitioners’ modest proposal of a slightly more than two-hour argument would equip the Court to undertake that task.

Dated: Nov. 7, 2024

*/s/ James A. Barta*  
Theodore E. Rokita  
*Attorney General*  
James A. Barta  
*Solicitor General*

OFFICE OF THE  
ATTORNEY GENERAL  
OF INDIANA  
302 W. Washington St.  
Indianapolis, IN 46204  
(317) 232-0709

*Counsel for Petitioner*  
*State of Indiana*

Respectfully submitted,

*/s/ Michael R. Williams*  
Patrick Morrisey  
*Attorney General*  
Michael R. Williams  
*Solicitor General*

OFFICE OF THE WEST VIRGINIA  
ATTORNEY GENERAL  
1900 Kanawha Blvd. E  
State Capitol Building 1, Rm. 26-E  
Charleston, WV 25305  
(304) 558-2021

*Counsel for Petitioner*  
*State of West Virginia*

/s/ Allison D. Wood

Allison D. Wood  
Makram B. Jaber  
Aaron M. Flynn  
MC GUIREWOODS LLP  
888 16th Street, NW, Suite 500  
Black Lives Matter Plaza  
Washington, DC 20006  
(202) 857-2420

Paul D. Clement  
C. Harker Rhodes IV  
CLEMENT & MURPHY, PLLC  
706 Duke Street  
Alexandria, VA 22314  
(202) 742-8900

*Counsel for Petitioner Electric  
Generators for a Sensible  
Transition*

/s/ Edmund G. LaCour Jr.

Steve Marshall  
*Attorney General*  
Edmund G. LaCour Jr.  
*Solicitor General*

OFFICE OF THE ATTORNEY GENERAL  
STATE OF ALABAMA  
501 Washington Ave.  
P.O. Box 300152

Montgomery, AL 36130-0152  
(334) 242-7300

*Counsel for Petitioner State of  
Alabama*

*/s/ Michael B. Schon*

---

Scott A. Keller  
Steven P. Lehotsky  
Michael B. Schon  
Joshua P. Morrow  
Jacob B. Richards  
LEHOTSKY KELLER COHN LLP  
200 Massachusetts Ave., NW  
Suite 700  
Washington, DC 20001  
(512) 693-8350

Mithun Mansinghani  
LEHOTSKY KELLER COHN LLP  
629 W. Main St.  
Oklahoma City, OK 73102

*Counsel for Petitioner National  
Rural Electric Cooperative  
Association*

*/s/ Thomas A. Lorenzen*

---

Thomas A. Lorenzen  
Amanda Shafer Berman  
Elizabeth B. Dawson  
CROWELL & MORING LLP  
1001 Pennsylvania Ave., NW  
Washington, DC 20004  
(202) 624-2500

*Counsel for Petitioner Edison  
Electric Institute*

*/s/ Garrison Todd*

---

Treg Taylor  
*Attorney General*  
Garrison Todd  
*Assistant Attorney General*  
ALASKA DEPARTMENT OF LAW  
1031 W. 4th Ave., Suite 200  
Anchorage, AK 99501  
(907) 269-5100  
*Counsel for Petitioner State of  
Alaska*

*/s/ Nicholas J. Bronni*

---

Tim Griffin  
*Attorney General*  
Nicholas J. Bronni  
*Solicitor General*  
Dylan Jacobs  
*Deputy Solicitor General*

OFFICE OF THE ARKANSAS  
ATTORNEY GENERAL  
323 Center Street, Suite 200  
Little Rock, AR 72201  
(501) 682-2007

*Counsel for Petitioner State of  
Arkansas*

/s/ Megan H. Berge

Megan H. Berge  
BAKER BOTTs L.L.P.  
700 K Street, NW  
Washington, DC 20001  
(415) 291-6233  
(202) 639-7733

J. Mark Little  
BAKER BOTTs L.L.P.  
910 Louisiana Street  
Houston, TX 77002  
(713) 229-1489

*Counsel for Petitioners Idaho  
Power Company; Oklahoma Gas  
and Electric Company; Montana-  
Dakota Utilities Co.; and Rainbow  
Energy Center, LLC*

/s/ David M. Flannery

David M. Flannery  
Kathy G. Beckett  
Keeleigh S. Huffman  
STEPTOE & JOHNSON PLLC  
707 Virginia Street, East  
P.O. Box 1588  
Charleston, WV 25326  
(304) 353-8000

Edward L. Kropf  
STEPTOE & JOHNSON PLLC  
P.O. Box 36425  
Indianapolis, IN 46236  
(317) 946-9882

*Counsel for Petitioners Midwest  
Ozone Group and Appalachian  
Region Independent Power  
Producers*

/s/ Henry C. Whitaker

Ashley Moody  
*Attorney General*  
Henry C. Whitaker  
*Solicitor General*  
James H. Percival  
*Chief of Staff*

OFFICE OF THE ATTORNEY GENERAL  
The Capital, Pl-01  
Tallahassee, FL 32399-1050  
(850) 414-3300

*Counsel for Petitioner State of  
Florida*

/s/ Stephen J. Petrany

Christopher M. Carr  
*Attorney General*  
Stephen J. Petrany  
*Solicitor General*

OFFICE OF THE ATTORNEY GENERAL  
OF GEORGIA  
40 Capital Square, SW  
Atlanta, GA 30334  
(404) 458-3408

*Counsel for Petitioner State of  
Georgia*

/s/ Misha Tseytlin

Misha Tseytlin  
TROUTMAN PEPPER HAMILTON  
SANDERS LLP  
227 W. Monroe Street, Suite 3900  
Chicago, IL 60606  
(608) 999-1240

Carroll Wade McGuffey III  
Melissa Horne  
TROUTMAN PEPPER HAMILTON  
SANDERS LLP  
600 Peachtree St. N.E.  
Suite 3000  
Atlanta, GA 30308  
(404) 885-3698

*Counsel for Petitioners National  
Mining Association and America's  
Power*

/s/ Eugene M. Trisko

Eugene M. Trisko  
Law Offices of Eugene M. Trisko  
P.O. Box 330133  
Atlantic Beach, FL 32233  
(301) 639-5238

*Counsel for Petitioners United  
Mine Workers of America, AFL-  
CIO; International Brotherhood of  
Electrical Workers, AFL-CIO; and  
International Brotherhood of  
Boilermakers, Iron Ship Builders,  
Blacksmiths, Forgers and Helpers,  
AFL-CIO*

/s/ Alan M. Hurst

Raúl R. Labrador  
*Attorney General*  
Alan M. Hurst  
*Solicitor General*  
OFFICE OF THE IDAHO ATTORNEY  
GENERAL  
P.O. Box 83720  
Boise, ID 83720-0010  
(208) 334-2400  
*Counsel for Petitioner State of  
Idaho*

/s/ Anthony J. Powell

Kris W. Kobach  
*Attorney General*  
Anthony J. Powell  
*Solicitor General*  
OFFICE OF THE KANSAS ATTORNEY  
GENERAL  
120 SW 10<sup>th</sup> Avenue, 2<sup>nd</sup> Floor  
Topeka, KS 66612  
(785) 368-8539  
*Counsel for Petitioner State of  
Kansas*

/s/ Charles T. Wehland

Charles T. Wehland  
JONES DAY  
110 North Wacker Drive  
Suite 4800  
Chicago, IL 60601-1692  
(312) 269-4388

Yaakov Roth  
Brinton Lucas  
S. Matthew Krsacok  
JONES DAY  
51 Louisiana Avenue, NW  
Washington, DC 20001  
(202) 879-7658

Jeffery D. Ubersax  
KUSHNER & HAMED Co., LPA  
1375 East Ninth Street  
Suite 1390  
Cleveland, OH 44114  
(216) 696-6700

*Counsel for Petitioner  
NACCO Natural Resources  
Corporation*

/s/ Eric H. Wessan

Brenna Bird  
*Attorney General*  
Eric H. Wessan  
*Solicitor General*

OFFICE OF THE ATTORNEY GENERAL  
OF IOWA  
1305 E. Walnut Street  
Des Moines, IA 50319  
(515) 823-9117

*Counsel for Petitioner State of  
Iowa*

/s/ Mark W. DeLaquil

Martin T. Booher  
Joshua T. Wilson  
Baker & Hostetler LLP  
2000 Key Tower  
127 Public Square  
Cleveland, OH 44114

Mark W. DeLaquil  
Baker & Hostetler LLP  
1050 Connecticut Ave., NW  
Suite 1100  
Washington, DC 20036  
(202) 861-1527

*Counsel for Petitioners,  
Westmoreland Mining Holdings  
LLC; Westmoreland Mining LLC;  
and Westmoreland Rosebud  
Mining LLC*

/s/ J. Benjamin Aguiñaga

Liz Murrill  
*Attorney General*  
J. Benjamin Aguiñaga  
*Solicitor General*  
Tracy Short  
*Assistant Attorney General*

LOUISIANA DEPARTMENT OF  
JUSTICE  
1885 N. Third Street  
Baton Rouge, LA 70804  
(225) 326-6766

*Counsel for Petitioner State of  
Louisiana*

/s/ Matthew F. Kuhn

Russell Coleman  
*Attorney General*  
Matthew F. Kuhn  
*Solicitor General*  
Jacob M. Abrahamson  
*Counsel for Special Litigation*

OFFICE OF THE KENTUCKY  
ATTORNEY GENERAL  
700 Capital Avenue, Suite 118  
Frankfort, KY 40601  
(502) 696-5300

*Counsel for Petitioner  
Commonwealth of Kentucky*

/s/ Justin L. Matheny

Lynn Fitch  
*Attorney General*  
Justin L. Matheny  
*Deputy Solicitor General*

OFFICE OF THE MISSISSIPPI  
ATTORNEY GENERAL  
P.O. Box 220  
Jackson, MS 39205-0220  
(601) 359-3825

*Counsel for Petitioner State of  
Mississippi*

/s/ Joshua M. Divine

Andrew Bailey  
*Attorney General*  
Joshua M. Divine  
*Solicitor General*  
MISSOURI ATTORNEY GENERAL'S  
OFFICE  
P.O. Box 899  
Jefferson City, MO 65102  
(573) 751-1800  
*Counsel for Petitioner State of  
Missouri*

/s/ Christian B. Corrigan

Austin Knudsen  
*Attorney General*  
Christian B. Corrigan  
*Solicitor General*  
Peter M. Torstensen, Jr.  
*Deputy Solicitor General*

MONTANA DEPARTMENT OF JUSTICE  
215 North Sanders  
P.O. Box 201401  
Helena, MT 59620-1401  
(406) 444-2026

*Counsel for Petitioner State of  
Montana*

/s/ Zachary A. Viglianco

Michael T. Hilgers  
*Attorney General*  
Zachary A. Viglianco  
*Deputy Solicitor General*  
OFFICE OF THE ATTORNEY GENERAL  
OF NEBRASKA  
2115 State Capitol  
Lincoln, NE 68509  
(531) 739-7645  
*Counsel for Petitioner State of  
Nebraska*

/s/ Mark W. Dell'Orfano

John Formella  
*Attorney General*  
Mark W. Dell'Orfano  
*Assistant Attorney General*

NEW HAMPSHIRE DEPARTMENT OF  
JUSTICE  
33 Capitol Street  
Concord, NH 03301  
(603) 271-3643

*Counsel for Petitioner State of New  
Hampshire*

/s/ Philip Axt

Drew H. Wrigley  
*Attorney General*  
Philip Axt  
*Solicitor General*

OFFICE OF ATTORNEY GENERAL OF  
NORTH DAKOTA  
600 E. Boulevard Ave., Dept. 125  
Bismarck, ND 58505  
(701) 328-2210

*Counsel for Petitioner State of  
North Dakota*

/s/ T. Elliot Gaiser

Dave Yost  
*Attorney General*  
T. Elliott Gaiser  
*Solicitor General*  
Mathura J. Sridharan  
Zachery P. Keller  
*Deputy Solicitors General*  
John K. McManus  
*Assistant Attorney General*

OHIO ATTORNEY GENERAL'S OFFICE  
30 East Broad St., 17th Floor  
Columbus, OH 43215  
(614) 466-8980

*Counsel for Petitioner State of Ohio*

/s/ Garry M. Gaskins, II

Gentner Drummond  
*Attorney General*  
Garry M. Gaskins, II  
*Solicitor General*  
Jennifer L. Lewis  
*Deputy Attorney General*  
OFFICE OF THE ATTORNEY GENERAL  
OF OKLAHOMA  
313 NE Twenty-First St.  
Oklahoma City, OK 73105  
(405) 521-3921

*Counsel for Petitioner State of  
Oklahoma*

/s/ J. Emory Smith, Jr.

Alan Wilson  
*Attorney General*  
Robert D. Cook  
*Solicitor General*  
J. Emory Smith, Jr.  
*Deputy Solicitor General*  
Thomas T. Hydrick  
Joseph D. Spate  
*Assistant Deputy Solicitors  
General*

OFFICE OF THE ATTORNEY GENERAL  
OF SOUTH CAROLINA  
1000 Assembly Street  
Columbia, SC 29201  
(803) 734-3371

*Counsel for Petitioner State of  
South Carolina*

*/s/ Steven Blair*

---

Marty J. Jackley  
*Attorney General*  
Steven Blair  
*Deputy Attorney General*  
SOUTH DAKOTA ATTORNEY  
GENERAL'S OFFICE  
1302 E. Highway 14, Suite 1  
Pierre, SD 57501  
(605) 773-3215  
*Counsel for Petitioner State of  
South Dakota*

*/s/ J. Matthew Rice*

---

Jonathan Skrmetti  
*Attorney General and Reporter*  
J. Matthew Rice  
*Solicitor General*  
Whitney Hermandorfer  
*Director of Strategic Litigation*

OFFICE OF THE ATTORNEY GENERAL  
AND REPORTER OF TENNESSEE  
P.O. Box 20207  
Nashville, TN 37202-0207  
(615) 741-7403

*Counsel for Petitioner State of  
Tennessee*

/s/ Wesley S. Williams

Ken Paxton

*Attorney General*

Brent Webster

*First Assistant Attorney General*

Ralph Molina

*Deputy First Assistant Attorney  
General*

James Lloyd

*Deputy Attorney General for  
Civil Litigation*

Kellie E. Billings-Ray

*Chief, Environmental Protection  
Division*

Wesley S. Williams

Ian Lancaster

*Assistant Attorneys General*

OFFICE OF THE ATTORNEY GENERAL

OF TEXAS

ENVIRONMENTAL PROTECTION

DIVISION

P.O. Box 12548, MC-066

Austin, TX 78711-2548

(512) 463-2012

*Counsel for Petitioner State of  
Texas*

/s/ Stanford E. Purser

Sean Reyes

*Attorney General*

Stanford E. Purser

*Solicitor General*

OFFICE OF THE UTAH ATTORNEY  
GENERAL

160 E. 300 S., 5th Floor

Salt Lake City, UT 84111

(385) 382-4334

*Counsel for Petitioner State of  
Utah*

/s/ *Erika L. Maley*

Jason Miyares  
*Attorney General*  
Erika L. Maley  
*Solicitor General*  
Kevin M. Gallagher  
*Principal Deputy Solicitor  
General*  
Brendan T. Chestnut  
*Deputy Solicitor General*  
VIRGINIA ATTORNEY GENERAL'S  
OFFICE  
202 North 9th Street  
Richmond, VA 23219  
(804) 786-2071  
*Counsel for Petitioner  
Commonwealth of Virginia*

/s/ *D. David DeWald*

Bridget Hill  
*Attorney General*  
D. David DeWald  
*Deputy Attorney General*  
OFFICE OF THE ATTORNEY GENERAL  
OF WYOMING  
109 State Capitol  
Cheyenne, WY 82002  
(307) 777-7895  
*Counsel for Petitioner State of  
Wyoming*